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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/522,499 03/10/00 HARPER

V 99-1107

EXAMINER
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QM12/0622

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KIDWELL, M	
ART UNIT	PAPER NUMBER

3761  
DATE MAILED:

06/22/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/522,499

Applicant(s)

HARPER, VERNICE J.

Examiner

Michele M. Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4 – 7 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant has claimed a "base side" which has not been defined nor supported by the claims or the specification.

Claims 4 – 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "said base side" in line 6. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US 6,059,763).

With respect to claim 1, Brown discloses a feminine hygiene article (10) having an elongate base panel with a top and bottom surface, opposite ends and a perimeter (12), a concave top surface and a convex bottom surface (figures 1b and 7), an upstanding member having a top side, a bottom side and a peripheral wall extending therebetween (14) wherein the upstanding member is located in a central portion of the base panel and is elongated towards opposite ends of the base panel with a longitudinal axis oriented generally parallel to a longitudinal axis of the base panel (figure 1) and a sealing member having a front side and a back side with the front side being fixedly coupled to the bottom surface of the base panel (23). Brown also discloses the upstanding member to be fixedly coupled to the top surface of the base panel as set forth in col. 6, lines 38 – 40. Likewise, Brown discloses the perimeter of the base panel lying generally in a plane wherein portions of the base panel lateral to the upstanding member curve upwardly from the bottom side of the upstanding member such that an uppermost tip of the upstanding member lies generally in the plane of the perimeter as set forth in figure 7.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,059,763).

As to claim 2, as best understood by the Examiner, Brown discloses a base panel having a peripheral edge (figures 1, 1a and 1c) with a lip being coupled to and extending upwardly away from said peripheral edge (16 as shown figures 5 – 7).

The difference between Brown and claim 2 is the provision that base panel be comprised of a cotton material.

It would have been obvious to one of ordinary skill in the art to modify the base panel of Brown to provide the article with a cotton material since cotton is well known in the art to provide added comfort next to the skin of the wearer while absorbing unwanted fluids. Additionally, Brown discloses a compressed, absorbent material, which may constitute cotton, for use in the article as set forth in col. 6, lines 11 – 33.

With respect to claim 3, Brown teaches the article with a base pad having a generally rectangular shape as set forth in figures 1, 1a, and 1c.

The difference between Brown and claim 3 is the provision that the base panel has a specific height.

It would have been obvious to one of ordinary skill in the art to modify the base panel of Brown because it is well known in the art to provide the base panel with a minimal height in order to provide an article with less bulk thereby minimizing the appearance of the article under clothing. Additionally, it would have been obvious to one of ordinary skill in the art to experiment with the height of the base panel in order to provide the desired structure since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Claims 4 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claims 1 – 3 above, and further in view of Hartman (US 5,833,680).

The difference between Brown and claim 4 is the provision that a length of a base side is approximately twice as long as a width of the top side.

Hartman teaches an article with an upstanding member that has a base side length approximately twice as long as a width of the top side as shown in figures 2, 4, 6, and 7. Although the figures of Hartman have not disclose an exact measurement of the top and bottom width of the upstanding member, it can be ascertained from the figures that the length of the base side is approximately twice as long as the length of the top side. Additionally, it would have been obvious to one of ordinary skill in the art to provide the base length of the upstanding member with a length approximately twice as long as the width of the top side in order to provide the article with a more effective fluid seal thereby providing controlled movements of the discharged fluid and better leakage protection.

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With respect to claim 5, Brown discloses an article comprising an upstanding member with a peripheral wall as previously recited. Although Brown does not designate a specific height to the peripheral wall, it would be obvious to provide the peripheral wall with a height approximately between one and two inches since the purpose of the upstanding member is to extend into a body opening of a user in order to absorb secreted body fluids from that opening. Therefore, if the base panel is attached to the undergarment of a user, it would be obvious to provide the upstanding member with the claimed height in order for the upstanding member to extend into the vaginal cavity.

As to claim 6, Brown discloses an article wherein the sealing member (23) has a size and shape being substantially identical to the bottom surface as shown in figure 1c. The difference between Brown and claim 6 is the provision that the sealing member is liquid-impermeable.

Hartman discloses an article with a plastic, liquid impermeable sealing member (7) as set forth in col. 2, lines 49 – 55.

It would have been obvious to one of ordinary skill in the art to modify the sealing member of Brown because it is well known in the art to provide absorbent articles with a liquid impervious layer in order to protect undergarments and any other clothing that is found under the article from accidental leakage of bodily fluids.

Regarding claim 7, Brown discloses an article further comprising an adhesive member (25, 39) for removably attaching sealing member to the undergarments of a user (col. 5, line 65 to col. 6, line 4 and figure 1c).

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With respect to claim 8, see the rejections of claims 1 – 7.

As to claim 9, absent of critical teaching and/or unexpected results, the examiner contends that the height as claimed would have been an obvious matter of design choice which does not patentably distinguish the claimed invention from the prior art invention.

### ***Response to Arguments***

Applicant's arguments filed April 3, 2001 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Brown reference teaches away from the applicant's invention which claims a base panel that curves upward to form a concave top surface, the examiner would like to direct the applicant to figure 1b of the Brown reference. The figure shows the base panel of Brown curved upwardly to form a concave top surface and a convex body surface as claimed by the applicant.

Furthermore, the absence of a critical teaching and/or unexpected results for this claimed limitation and the limitations of claims 3 – 5 and 8, leads the examiner to believe that these limitations are an obvious matter of design choice which does not patentably distinguish the claimed invention from the prior art of record.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

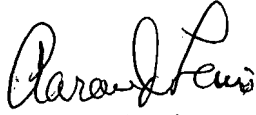
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.

Michele Kidwell  
June 18, 2001

  
Aaron J. Lewis  
Primary Examiner

**Attachment for PTO-948 (Rev. 03/01, or earlier)**  
**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

**2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

**Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.